UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BONNIE M. PETERSEN, f/k/a/ BONNIE M.
DESMOND,

                    Plaintiff,

      vs.

RORY BOLTER, in his official capacity as an
employee of the Arlington Police Department,
et al.,

                  Defendants.

NO. C09-1164RSL

ORDER GRANTING SNOHOMISH
COUNTY'S MOTION TO DISMISS
PURSUANT TO FRCP 12

I. INTRODUCTION

This matter comes before the Court on "Defendant Snohomish County's Motion to

Dismiss Pursuant to FRCP 12(b)(6)" (Dkt. #7). The Court has also considered the arguments

presented in plaintiff's response (Dkt. #8) and defendants' reply (Dkt. #10). Defendant moves to

dismiss the complaint against Snohomish County ("the County") and its employee, Deputy

Prosecutor Mark K. Roe ("Roe") because the amended complaint has not sufficiently alleged two

elements of malicious prosecution under Washington State law. Additionally, the County claims

Deputy Prosecutor Roe is absolutely immune from liability. Having held oral argument on

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December 8, 2009, and having reviewed the submissions of the parties, the Court GRANTS

defendants' motion to dismiss because it finds that Roe was acting within the scope of his duties

as prosecutor in signing a criminal complaint and is therefore absolutely immune from liability.

II. FACTUAL BACKGROUND

The underlying facts of this case are tragic. Briefly, plaintiff was arrested and held in jail

on June 18, 2007 on a charge of First Degree Manslaughter for allegedly causing the death of her

infant by taping a pacifier in his mouth. Weeks later, however, after the County Medical

Examiner's autopsy could not determine with certainty the baby's cause of death, the charges

were dropped.

On August 17, 2009, Plaintiff filed a complaint (Dkt. #1) against the arresting officers,

prosecutors, and their employing municipalities alleging both federal and state causes of action

for "arrest without probable cause" and "unlawful imprisonment." The County filed a motion to

dismiss that complaint (Dkt. #7) on September 17, 2009. Apparently moved by the arguments in

the County's motion, on October 6, 2009, plaintiff filed both a nominal response (Dkt. #8) and

amended complaint (Dkt. #9), the latter of which now alleges only a state law cause of action

against the County and its prosecutor for "malicious prosecution." The County filed a reply (Dkt.

#10) on October 9, 2009.

III. DISCUSSION

Plaintiff's First Amended Complaint, having dropped its previous Section 1983 claims,

now alleges only one state law cause of action, malicious prosecution, against the County and Mr.

Roe. <u>See</u> Plaintiff's Response, Dkt. #8 at 4 ("The sole cause of action set forth in plaintiff's First

Amended Complaint asserts a state-law cause of action for malicious prosecution against

Snohomish County and Mark K. Roe, a Snohomish County Deputy Prosecuting Attorney.")

Defendants move to dismiss this cause of action because plaintiff has not alleged facts sufficient

to show two elements of malicious prosecution under Washington State law. Defendants also

argue that, regardless of the these missing elements, Deputy Prosecutor Roe is absolutely immune

from liability because he was acting in his official capacity as prosecutor, citing <u>Tanner v. City of

Federal Way</u>, 100 Wn. App. 1 (2000). While it is doubtful plaintiff's allegations would survive

scrutiny if further examined, the Court finds it need not address the elements of malicious

prosecution under Washington State law because it finds Mr. Roe to have been acting within the

scope of his duties as prosecutor and therefore to be absolutely immune from liability.

　　　The root of plaintiff's malicious prosecution claim can be found in Paragraph 6.9 of its

amended complaint: "That Bonnie M. Peterson would not have been jailed . . . but for the filing

of Criminal Complaint by Mark R. Roe on June 19, 2007 in Snohomish County District Court,

and the false testimony submitted by Mark K. Roe contained therein." Mr. Roe's alleged "false

testimony" is described in Paragraph 3.19:

> That the Criminal Complaint . . . falsely stated that Bonnie M. Petersen recklessly
> caused the death of her infant son N.J.P. At the time said complaint was filed, and
> up until the present time Mark Roe did not know the cause of death of N.J.P. . . .

Plaintiff alleges that because Mr. Roe signed and filed a criminal complaint against her for First

Degree Manslaughter without knowing for a <u>certainty</u> the cause of death, he "falsely testified"

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and is subject to suit for malicious prosecution.

It should go without saying that this argument is untenable. "It is well established that a prosecutor who acts within the scope of his or her duties in initiating and pursuing a criminal prosecution is absolutely immune from liability." Tanner, 100 Wn.App. at 4. Plaintiff's argument is clearly foreclosed by Tanner, which squarely holds: "We hold that a prosecutor does not act as a complaining witness by certifying the presence of reasonable grounds to believe that the accused has committed the cited offense." Id. It further states that "[i]nitiating and signing a criminal complaint after reviewing evidence provided by a complaining witness are functions that fall squarely within the traditional functions of a prosecutor." Id. at 7. Here, Mr. Roe did no more than sign a complaint certifying the presence of reasonable grounds to believe Ms. Petersen had committed the cited offense. As such, he is absolutely immune from liability. The County shares Roe's absolute immunity for this claim. See Tanner, 100 Wn.App at 6 (citing Kentucky v. Graham, 473 U.S. 159, 167-68 (1978)).

III. CONCLUSION

For the foregoing reasons, defendant's motion to dismiss is GRANTED. The claims

against Deputy Prosecutor Roe and Snohomish County are DISMISSED.

DATED this 8th day of December, 2009.

MM S Lasnik
Robert S. Lasnik
United States District Judge

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